



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

999 18<sup>TH</sup> STREET - SUITE 300

DENVER, CO 80202-2466

<http://www.epa.gov/region08>

COPY

JAN 05 2005

Ref: 8ENF-T

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Honorable Greg James  
Mayor, City of Newcastle  
10 West Warwick  
Newcastle, WY 82701

Re: Complaint and Notice of  
Opportunity for Hearing  
Docket No. **SDWA-08-2005-0007**

Dear Mayor James:

Enclosed is an administrative "Complaint and Notice of Opportunity for Hearing" (Complaint) filed against the City of Newcastle (City), under Section 1414 of the Safe Drinking Water Act (SDWA), 42 U.S.C Section 300g-3. The U.S. Environmental Protection Agency (EPA) alleges in the Complaint that the City failed to comply with an Administrative Order, Docket No. SDWA-08-2001-35, issued on September 26, 2001, under Section 1414(g) of the SDWA, 42 U.S.C. Section 300g-3(g). The violations are specifically set out in the Complaint.

By law, the City has the right to request a hearing regarding the matters set forth in the Complaint. Please pay particular attention to those parts of the complaint entitled "Opportunity to Request a Hearing" and "Failure to File an Answer." If the City does not respond to this Complaint within 30 days of receipt, a Default Judgment may be entered and the proposed civil penalty may be assessed without further proceedings. In the City's Answer it may request a hearing. The City has the right to be represented by an attorney at any stage of these proceedings.

Whether or not the City requests a hearing, you and/or any other representative of the City, including counsel for the City, may confer informally with EPA concerning the alleged violations or the amount of the proposed penalty.

EPA encourages all parties against whom it files a Complaint proposing assessment of a penalty to pursue the possibilities of settlement through an informal conference. Any such settlement shall be finalized by the issuance of a Final Order by the Regional Judicial Officer, EPA Region 8. The issuance of a Consent Agreement shall constitute a waiver of the City's right to request a hearing on any matter to which the City has stipulated therein.



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City of Newcastle  
Page 2 of 2

A request for an informal conference does not extend the 30-day period during which City must submit a written answer and a request for a hearing. The informal conference procedure may be pursued as an alternative to, and simultaneous with, the adjudicatory hearing.

If you have questions specific to the violations or penalty, the most knowledgeable people on my staff regarding this matter are Olive Hofstader, Environmental Protection Specialist, who can be reached at 800/227-8917 extension 6467, or Peggy Livingston, Enforcement Attorney, who can be reached at 800/227-8917 extension 6858.

We urge your prompt attention to this matter.

Sincerely,



Carol Rushin  
Assistant Regional Administrator  
Office of Enforcement, Compliance  
and Environmental Justice

Enclosure

cc: Larry Robinson, WYDEQ  
Dr. Karl Musgrave, WYDOH



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Ref:8ENF-T

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Ted Elliott  
Weston County Commissioner  
1 West Main  
Newcastle, WY 82701

Re: Notice of Complaint and Notice of Opportunity for  
Hearing Against City of Newcastle  
Docket No.

Dear Mr. Elliott:

Under the Safe Drinking Water Act (SDWA), the Environmental Protection Agency (EPA) administers a program to protect public water supplies in Wyoming. When the EPA takes certain enforcement actions against public water supply systems in Wyoming, the EPA is required to notify an appropriate locally elected official. With this letter, the EPA is notifying you of an enforcement action involving a system in your county.

The EPA is issuing a Complaint and Notice of Opportunity for Hearing (Complaint) under Section 1414(g)(3) of the SDWA, 42 U.S.C. § 300g-3(g)(3), to the City of Newcastle (City) for a proposed penalty of \$9,500.00. The Complaint alleges that the City has violated an Administrative Order (Docket No. SDWA-08-2001-35). That Order required the City to comply with various National Primary Drinking Water Regulations, including 40 CFR §§ 141.63, 141.21(b)(5), 141.201 and 141.31(b). These regulations establish a Maximum Contaminant Level for total coliform bacteria and require systems to conduct additional monitoring in months following positive total coliform results, to provide public notice of violations, and to report violations to the EPA.

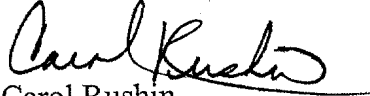
A copy of this Complaint is enclosed for your information. The Complaint does not require any response or action by the County Commission.



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If you would like to discuss this matter further, please feel free to contact me directly at 303/312-6051. If you have questions specific to the violations or penalty, the most knowledgeable people on my staff regarding this matter are Olive Hofstader, Environmental Protection Specialist, who can be reached at 800/227-8917 extension 4647, or Peggy Livingston, Enforcement Attorney, who can be reached at 800/227-8917 extension 6858.

Sincerely,

A handwritten signature in black ink, appearing to read "Carol Rushin", with a stylized flourish at the end.

Carol Rushin

Assistant Regional Administrator  
Office of Enforcement, Compliance  
and Environmental Justice

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8**

IN THE MATTER OF )

2005 JAN -5 AM 8: 53

City of Newcastle )  
10 West Warwick )  
Newcastle, WY 82701 )  
PWS ID # 5600256 )

) Docket No. **SDWA-08-2005-0007**

FILED  
EPA REGION VIII  
HEARING CLERK

Respondent )

) **COMPLAINT AND NOTICE OF  
OPPORTUNITY FOR HEARING**

Proceedings under section 1414(g)  
of the Safe Drinking Water Act,  
42 U.S.C. § 300g-3(g) )

**COMPLAINT**

This civil administrative Complaint and Notice of Opportunity for Hearing ("complaint") is issued under the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by section 1414(g)(3) of the Safe Drinking Water Act, as amended ("SDWA"), 42 U.S.C. § 300g-3(g)(3). Section 1414(g)(3) of the SDWA authorizes the Administrator of the EPA to assess an administrative civil penalty, not exceeding \$25,000, against any person who violates, or fails or refuses to comply with, an order issued under section 1414(g)(1) of the SDWA.

The Complainant in this action is the Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice, EPA Region 8, who has been duly authorized to institute this action. This proceeding is subject to EPA's "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits," 40 C.F.R. part 22. ("Consolidated Rules of Practice")(Complainant's Attachment 1).

**GENERAL ALLEGATIONS**

1. The City of Newcastle ("Respondent") is a municipality and therefore a "person" as that term is defined in section 1401(12) of the SDWA, 42 U.S.C. § 300f(12), and 40 C.F.R. § 141.2.
2. Respondent owns and/or operates a system, the City of Newcastle water system (the "System"), located in Weston County, Wyoming, for the provision to the public of piped water for human consumption.
3. The System regularly serves an average of approximately 3,000 year-round residents through approximately 1,300 service connections and is therefore a "public water system" as that term is defined in section 1401(4) of the SDWA, 42 U.S.C. § 300f(4), and a "community water system" as that term is defined in section 1401(15) of the SDWA, 42 U.S.C. § 300f(15) and 40 C.F.R. § 141.2.
4. As an owner and/or operator of a public water system, Respondent is a "supplier of water" as that term is defined in section 1401(5) of the SDWA, 42 U.S.C. § 300f(5), and 40 C.F.R. § 141.2. Respondent is therefore subject to the requirements of part B of the SDWA, 42 U.S.C. § 300g et seq., and its implementing regulations, 40 C.F.R. part 141.
5. The source of the System's water is groundwater, which is supplied by four wells.
6. On September 25, 2001, EPA issued an Administrative Order (Docket No. SDWA-08-2001-35) to the Respondent, pursuant to section 1414(g)(1) of the SDWA, 42 U.S.C. § 300g-3(g)(1), citing certain violations of the National Primary Drinking Water Regulations (NPDWRs), 40 C.F.R. part 141. A copy of the Administrative Order is attached to this complaint and incorporated herein

(Complainant's Attachment 2). The effective date of the Administrative Order was September 25, 2001.

7. The Administrative Order required the Respondent to achieve compliance with the NPDWRs that EPA had found Respondent to have violated.
8. On March 27, 2003, EPA sent Respondent a "Violation of Administrative Order" letter citing Respondent's failure to comply with the Administrative Order and the NPDWRs. (Complainant's Attachment 3).

### **SPECIFIC ALLEGATIONS**

#### **Count I**

#### **Failure to comply with the Total Coliform Bacteria Maximum Contaminant Level (MCL)**

9. The NPDWRs require community public water systems to monitor their water to determine compliance with the Maximum Contaminant Level (MCL) for total coliform bacteria as stated in 40 C.F.R. § 141.63. The frequency of required monitoring depends on the size of the system. With a population between 2,501 and 3,300, the System is required to take a minimum of three samples per month. (40 C.F.R. § 141.21(a)(2).)
10. For systems collecting fewer than 40 samples per month, the MCL for total coliforms is stated as a prohibition against any more than one sample collected during a month being positive for total coliform bacteria. (40 C.F.R. § 141.63(a)(2).)
11. Page 6 of the Administrative Order, in paragraph 1 of the "Order" section, required Respondent to comply with the bacteriological MCL as stated in 40 C.F.R. § 141.63.

12. Monitoring results submitted by Respondent for the System indicated that the System exceeded the MCL for total coliform bacteria in July of 2003 and in July of 2004, in violation of the Administrative Order and 40 C.F.R. § 141.63.

**Count II**

**Failure to Collect 5 Routine Total Coliform Bacteria Samples**

13. 40 C.F.R. § 141.21(b)(5) requires any public water system that collects fewer than 5 routine samples per month and that has one or more total coliform positive sample(s) to collect at least 5 routine samples during the next month the system provides water to the public.
14. Page 7 of the Administrative Order, in paragraph 3 of the "Order" section, required Respondent to collect at least 5 routine total coliform bacteria samples during any month following a month in which the system had one or more total coliform positive samples.
15. Respondent failed to collect 5 routine total coliform bacteria samples in August of 2002, September of 2002, and August of 2003 after a total coliform positive sample in each of the previous months, in violation of the Administrative Order and 40 C.F.R. § 141.21(b)(5).
16. In September of 2002 and August of 2003, Respondent took three routine samples it was normally required to take by 40 C.F.R. § 141.21(a)(2) rather than 5 routine samples required by 40 C.F.R. § 141.21(b)(5), and each of these samples was negative for total coliform.

**Count III**

**Failure to Notify Public of NPDWR Violations**

17. 40 C.F.R. subpart Q, §§ 141.201 et seq., requires that public water systems shall notify the public of failures to comply with the NPDWRs.



18. For any violations occurring before Oct. 31, 2000 in Wyoming, 40 C.F.R. § 141.32 required that public water systems were required to notify the public of failures to comply with the NPDWRs.
19. On pages 7 and 8, in paragraph 5 of the "Order" section, the Administrative Order required the Respondent to notify the public of the violations listed in the Findings of Violation section of Administrative Order and of any violations occurring after the issuance of the Administrative Order.
20. The Respondent failed to notify the public of (a) the failure to take five additional routine total coliform bacteria samples in August of 2000, following a positive sample in the prior month and (b) the failure to take a set of repeat samples within 24 hours of receiving total coliform positive samples in July 1998 and July 2000, in violation of the Administrative Order and 40 C.F.R. §141.32.
21. The Respondent failed to notify the public of the failure to take five additional routine total coliform bacteria samples in August of 2002 and September of 2002, in violation of the Administrative Order and 40 C.F.R. subpart Q, including 40 C.F.R. § 141.204.

#### **Count IV**

##### **Failure to Report Noncompliance with NPDWRs to EPA**

22. 40 C.F.R. § 141.31(b) requires that except where a different period is specified by 40 C.F.R. part 141, each public water system shall report any failure to comply with the NPDWRs to EPA within 48 hours.
23. Page 9 of the Administrative Order, in paragraph 6 of the "Order" section, required Respondent to comply with 40 C.F.R. § 141.31(b) by reporting to EPA any failure to comply with any NPDWR within 48 hours.

24. With the exception of the July of 2003 total coliform MCL violation, Respondent failed to report to EPA any of the instances of noncompliance detailed in the counts set forth above, in violation of the Administrative Order and 40 C.F.R. § 141.31(b).

#### **PROPOSED ADMINISTRATIVE CIVIL PENALTY**

Section 1414(g)(3) of the SDWA, 42 U.S.C. § 300g-3(g)(3), authorizes the Administrator to assess an administrative civil penalty of up to \$25,000<sup>1</sup> for violation of an Administrative Order issued under Section 1414(g)(1) of the SDWA. The proposed penalty has been determined in accordance with Section 1414 of the SDWA, 42 U.S.C. § 300g-3. For purposes of calculating and assessing a rational and consistent penalty, EPA has taken into account the seriousness of the violation, the population at risk, and other appropriate factors, including Respondent's degree of willfulness and/or negligence, history of noncompliance, if any, and ability to pay, as known to Complainant at this time. Based on the above factors, EPA proposes to assess an administrative civil penalty of \$9,500 against Respondent for violations of the Administrative Order.

#### **OPPORTUNITY TO REQUEST A HEARING**

As provided in Section 1414(g)(3)(B) of the SDWA, 42 U.S.C. § 300g-3(g)(3)(B), the Respondent has the right to request a public hearing on any material fact alleged in this complaint or on the appropriateness of the proposed penalty or to assert that it is entitled to judgment as a matter of law. The remainder of this complaint consists of instructions to the Respondent (addressed as "you").

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<sup>1</sup>In an action for violations occurring on or after March 15, 2004, a penalty of up to \$27,500 is authorized. See 69 Fed. Reg. 7121, February 13, 2004.

If you wish to request a hearing, you must file a written answer in accordance with 40 C.F.R. §§ 22.15 and 22.42 within thirty (30) calendar days after this complaint is served. If this complaint is served by mail, you have an additional five (5) calendar days, pursuant to 40 C.F.R. § 22.07(c).

If you request a hearing in your answer, the procedures provided in 40 C.F.R. part 22, subpart I, will apply to the proceedings, and the Regional Judicial Officer will preside. However, you have the right under the SDWA to elect a hearing on the record in accordance with Section 554 of the Administrative Procedure Act, 5 U.S.C. §§ 551 et seq. ("APA"). To exercise this right, you must include in your answer a specific request for a hearing on the record in accordance with 5 U.S.C. § 554. Upon such request, the Regional Hearing Clerk will recaption the pleadings and documents in the record as necessary. (See 40 C.F.R. § 22.42.) Pursuant to such a request, subpart I will not apply to the proceedings and an Administrative Law Judge from Washington, D.C., will preside.

Your answer and one copy must be in writing and must be sent to the EPA Regional Hearing Clerk at the address below:

Tina Artemis  
Region 8 Hearing Clerk (8RC)  
U.S. Environmental Protection Agency  
999 18th Street, Suite 300  
Denver, Colorado 80202-2466

#### **FAILURE TO FILE AN ANSWER**

To avoid entry of a default order against you pursuant to 40 C.F.R. § 22.17 for the full amount of the penalty proposed in this complaint, you must file a written answer with the Regional Hearing Clerk at the address above within thirty (30) days of receipt of this complaint. Your answer should clearly and directly admit, deny, or explain each of the factual allegations contained in this complaint with regard to which you have any knowledge. Your answer should

state (1) the circumstances or arguments which are alleged to constitute grounds of defense, (2) a concise statement of the facts which you intend to place at issue in the hearing, and (3) whether a hearing is requested. Failure to admit, deny, or explain any material factual allegation contained in this complaint shall constitute an admission of the allegation.

**SETTLEMENT CONFERENCE**

EPA encourages the exploration of settlement possibilities through an informal settlement conference. Please note that a request for, scheduling of, or participation in, a settlement conference does not extend the period for filing an answer and request for hearing as set out above. The settlement process, however, may be pursued simultaneously with the administrative litigation procedures found in 40 C.F.R. part 22. If a settlement can be reached, its terms shall be expressed in a written consent agreement, signed by the parties and incorporated into a final order signed by the Presiding Officer. A request for a settlement conference, or any questions that you may have regarding this complaint, should be directed to the attorney listed below.

Dated this 27<sup>th</sup> day of December 2004.

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, REGION 8

Complainant.



Carol Rushin  
Assistant Regional Administrator  
Office of Enforcement, Compliance  
and Environmental Justice  
999 18th Street, Suite 300  
Denver, Colorado 80202-2466

Margaret J. ("Peggy") Livingston  
Margaret J. ("Peggy") Livingston, Attorney  
Legal Enforcement Program  
Office of Enforcement, Compliance  
and Environmental Justice  
U.S. EPA Region 8  
999 18th Street, Suite 300  
Denver, Colorado 80202-2466  
Telephone Number: (303) 312-6858  
Facsimile Number: (303) 312-6953

IN THE MATTER OF:

TOWN OF NEWCASTLE,  
WYOMING

DOCKET NUMBER:

CERTIFICATE OF SERVICE

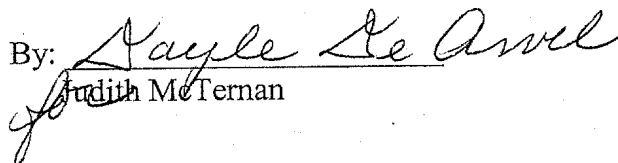
The undersigned hereby certifies that the original and one copy of the COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING with all Attachments were hand-carried to the Regional Hearing Clerk, EPA, Region 8, 999 18th Street, Denver, Colorado, and that a true copy of the same was delivered as follows:

Via certified mail to:

Honorable Greg James  
Mayor, City of Newcastle  
10 West Warwick  
Newcastle, Wyoming 82701

Date: JAN 05 2005

By:

  
Judith McTernan